ORIGINAL

Supreme Court, U.S.
FILED
JAN 21 1999
CLERK

98-1045
SUPREME COURT OF THE UNITED STATES

CHRISTOPHER ARTUZ, Superintendent
Green Haven Correctional Facility
Petitioner,

-against-

ADALBERTO FERNANDEZ
Respondent.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Pursuant to Rule 39.1 of the Rules of this Court, motion is hereby made that respondent be allowed to proceed in forma pauperis. Respondent's declaration in compliance with 28 U.S.C. § 1746 is attached to this motion. Leave to proceed in forma pauperis was sought and obtained in both courts below.

Dated: Stormville, New York
January 19, 1999

Adalberto Fernandez
88-T-1851 Pro Se
Route 216 Drawer B
Stormville, N.Y. 12582-0010

98-1045
SUPREME COURT OF THE UNITED STATES

CHRISTOPHER ARTUZ, Superintendent
Green Haven Correctional Facility
Petitioner,

-against-

ADALBERTO FERNANDEZ
Respondent.

DECLARATION IN SUPPORT OF A MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

I, **ADALBERTO FERNANDEZ** declare that I am the respondent in the above-entitled case, that in support of my Motion for Leave to Proceed In Forma Pauperis, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and that I believe I am entitled to redress.

I further declare that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of proceeding in this Court are true.

1. Are you presently employed? Yes __X__ No _____

   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

   $21.00 dollars per month and the employer is Green Haven Correctional Facility.

   b. If the answer is no, state the date of your last employment and amount of the salary or wages per month which you received.

   N/A

2. Have you received within the past twelve months any income from a business, profession, or other form of self-employment, or in the form of rent payments, interest, dividends or other sources?

   Yes __X__ No _____

   a. If the answer is yes, describe each source of income and state the amount received from each during the past twelve months.

   Received gifts totalling $60.00 for birthday and holidays from relatives.

3. Do you own any cash or checking or savings account?

Yes _____ No X

a. If the answer is yes, state the total value of the items owned.

N/A

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

Yes _____ No X

a. If the answer is yes, describe the property and state its approximate value.

N/A

5. List the persons who are dependent upon you for support and state your relationship to those persons.

Two sons, one is in the Dominican Republic.

6. I declare under penalty of perjury that the foregoing is true and correct, and I understand that a false statement or answer to any question in this declaration will subject me to penalties for perjury.

/s/ Adalberto Fernandez

Adalberto Fernandez Pro Se

Executed this 19th day of January, 1999

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98-1045

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

CHRISTOPHER ARTUZ, Superintendent
Green Haven Correctional Facility
Petitioner,

-against-

ADALBERTO FERNANDEZ
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Consideration Governing Review on Cetiorari

Petitioner Claims the reasons for granting the writ are whether the Second Circuit has arrogated to itself Jurisdiction denied it by Congress over the custody of state prisoners without complying with 28 U.S.C. Section 2253 (C) leaves the law in substantial confusion. And whether Federal Courts are free to enlarge the limitation periods set by congress.

Under rule 10(C) one of the considerations governing review is whether a United States Court of Appeals ahs decided an important federal question in a way that conflicts with relevant decisions of thi court. Respondent claims it has not and the confusion has been justifiably satisfied in the Second Circuit

Court of Appeals, and is in agreement with all the Circuit Courts throughout the country, which allow the one year grace period.

STATEMENT OF THE CASE

Apparently not satisfied with the vast reductions in authority imposed on the courts by prior Judicial determinations, and the review standards contained in Public Law 104-132 Antiterrorism and Effective Death Penalty Act, Hereinafter referred to as AEDPA.

The state argues for the most constrictive, retroactive interpretation of the one year filing limitation contained in the Amendments to 28 U.S.C. 2254 possible. Something that commentators have noted, at times, criticized the hastily drawn, and ambiguous nature of the statute.

In any event, the state now argues, the one year filing period, clearly a procedure limitation, should apply retroactively, thereby barring Federal Habeas Corpus Review of this conviction. Whether the Second Circuit has arrogated to itself Jurisdiction denied it by congress over the custody of state prisoners andwhether Federal Courts are free to enlarge the limitation periods set by congress.

REASONS TO DENY THE WRIT

Any reliance upon Peterson v. Demskie 107 F.3rd 92 (2nd Cir 1997) in support of the states position is misplaced. Either the one year provision is retroactive, thereby barring the commencement of the proceeding, or it is not!

There is absolutely no provision for an extension based upon a case by case analysis of the number of days before the eventual filings what was contemplated by Peterson, is a Rule 9 analysis of due diligence, which of course survives the enactment of the amendments in question. When the AEDPA was passed on April 24, 1996 I filed my Habeas Petition 348 days after, regardless of the new evidence I was seeking at the time of the bill. I elected to bring my argument before the one year ran out as I understood it, to the District Court.

RECENT OPINION

In Ross v. Artuz 150 F.3rd 97 (1998) the Second Circuit, created a one-year grace period, retroactive to the April 24, 1996, effective date of the AEDPA. Under that rule, no Habeas Corpus Application brought before April 24, 1997, was to be dismissed by application of Section 2244 (d).

After the Ross case the District Court denied my request for Certificate of Appealability I then appealed to the Second Circuit

citing Ross v. Artuz and the effective date of the AEDPA and on September 25, 1998 this Second Circuit ordered in light of the courts recent decision in Ross v. Artuz __F.3rd__ 1998 WL 4000446 (2nd Cir. June 24, 1998) the District Courts dismissal of petitioners §2254 petition as time barred under 28 U.S.C. §2254 (d)(1) is vacated and the matter is remanded to the District Court

for further proceedings.

I Strongly submit, these issue's are not truly proffered in good faith by the petitioner, and strangely, their arguing same is truly indicative, or their concept of fundamental fairness, which permeates all of the issues presented below for review.

Yours, etc
Adalberto Fernandez
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(COA2 DKT 98-2574)
Drawer B
Stormville, N.Y. 12582

TO: Office of District Attorney
ADA Marc Frazier Scholl
One Hogan Place
New York, N.Y. 10013

98-1045

SUPREME COURT OF THE UNITED STATES

CHRISTOPHER ARTUZ, Superintendent
Green Haven Correctional Facility
Petitioner,

-against-

PROOF OF SERVICE

ADALBERTO FERNANDEZ
Respondent.

I, **ADALBERTO FERNANDEZ** have mailed a copy of my opposition to a writ of Certoriari, by placing a postmarked envelope to the prison mail room, at Green Haven Correctional Facility where I am incarcerated, to the following parties: 1. Solicitor General of the United States, Room 5614, Department of Justice 950 Pennsylvania Avenue N.W Washington DC 20530-0001. 2. Marc Frazier Scholl, ADA New York County, One Hogan Place New York, New York 10013 (212) 335-9000

Dated: January 19, 1999

ADALBERTO FERNANDEZ
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